

**MINUTES
BOARD OF ADJUSTMENT
NOVEMBER 12, 2013**

Chair Townsend called the meeting to order at approximately 7:00 p.m. Those members attending included Phil Clithero, David Townsend, Martha John, Fred Carroz and Sean Flanagan. Also attending were the City Clerk, Sheela Amin, Planner, Steve MacIntyre, and Assistant City Counselor, Rose Wibbenmeyer.

The minutes from the regular meeting of September 10, 2013 were approved as submitted on a motion by Mr. Clithero and a second by Ms. John.

The following cases, properly advertised, were considered. All persons testifying were duly sworn by the City Clerk.

Case Number 1870 was request by Jeff Parshall, attorney for Boone County Fire Protection District, for a conditional use permit to construct a 140 foot monopole style telecommunications facility and the associated above ground communications equipment shelter on property located at 2201 I-70 Drive Northwest.

Chair Townsend opened the public hearing.

Dan Beckett, an attorney with offices at 111 S. Ninth Street, provided a handout and explained he was representing the owner, the Boone County Fire Protection District, and St. Charles Tower, Inc., the entity that desired to lease a portion of the property located at 2201 I-70 Drive Northwest from the Boone County Fire Protection District. The lease was contingent upon approval of this application for a conditional use permit to construct a 140 foot monopole style communications tower and related above ground communications shelter on the northwest corner of the property. He referred to Exhibit 7 of the handout he had provided and noted it showed the proposed location of the tower. He commented that at the request of the Boone County Fire Protection District the tower would be used for emergency communications as well as commercial cellular communication companies, by allocating space on the tower for an antenna to be owned by the Boone County Fire Protection District. The tower and support facility would serve a public purpose by improving the District's emergency support services and response in northwest Columbia. He offered into evidence Exhibits 1-8, certified copies of Sections 29-17, 29-21.3 and 29-23 of the Columbia Code of Ordinances, the proposed tower site plan, a letter from Russell Been of Collective Solutions, LLC on behalf of the applicant and St. Charles Tower, Inc., a map from the Assessor's Office showing the location of the subject tract, a picture of where the tower would be constructed on the site and photo simulations of a proposed communications tower on the subject tract. The property on which the proposed tower would be built was zoned C-P and was located on the northwest corner of the I- 70 and Stadium Boulevard interchange as shown on Exhibit 6. Directly across I-70 to the south was the Holiday Inn Executive Center, to the west were Emery Sapp and Sons and the Columbia Board of Realtor offices, and to the north was R-3 zoned property occupied by the Four Winds Village Apartment Complex. He referred to Exhibit 8 and stated he believed the aesthetic impact to the community would be minimal. He explained communications antennas and towers were permitted uses in C-P after the issuance of a conditional use permit pursuant to the provisions of Section 29-23. He commented that the items listed in Section 29-21.3(e)(2) had been satisfied. There were no existing towers or structures

within the geographical area that met the engineering requirements of St. Charles Tower. St. Charles Tower had made diligent efforts to co-locate the proposed antenna on other facilities in the area including the facility owned by American Tower at 2901 I-70 Drive, but such efforts were unsuccessful. The tower could not be located elsewhere while still meeting the technical requirements of providing the enhanced cellular service within this portion of the City of Columbia, and there was not sufficient space at the existing sites to accommodate the additional equipment required by the Boone County Fire Protection District and St. Charles Tower. He commented that efforts had been made to identify land in Cosmo Park, but a viable location could not be determined given the elevation requirements of the project. He explained Exhibit 9, an exhibit he had not admitted into evidence, was a photo of the tower owned by American Tower located a little less than a mile west of the subject property, and noted it had external antenna platforms to accommodate commercial cellular carriers. He pointed out St. Charles Tower had not previously failed to take advantage of available shared use opportunities. In addition, this proposed tower would be able to accommodate at least three cellular carriers and the antenna for the Boone County Fire Protection District. He asked the Board to grant the conditional use permit to the Boone County Fire Protection District and St. Charles Tower, Inc. to allow the construction of a communications tower and support facility according to the plans and specifications defined in the site plan. He commented that there would be no adverse impact from the Board in granting the conditional use permit. He believed the community would be served, the general welfare of the citizens of Columbia would be improved, and cellular coverage would be more reliable. He noted Russell Been of Collective Solutions, LLC would explain the technical requirements of the site, the reason the antenna arrays needed to be external and the reason the tower needed to be 140 feet in height.

Russell Been, 1736 Westpark Center Drive, Suite 201, Fenton, Missouri, explained he was with Collective Solutions, LLC, an agent for St. Charles Tower, and commented that there were two reasons they were proposing a monopole structure at this location. The Boone County Fire Protection District needed a 20 foot omnipole style antenna, which would not function within a canister style support structure, and the major carriers were now using 10 foot LTE antennas, which functioned by a 10 foot panel antenna and would not fit within the canister of a flagpole or stealth style structure. The location was chosen after determining the American Tower did not have sufficient ground and capacity. He stated the Boone County Fire Protection District was looking to expand and increase their coverage on that side of Columbia, and had requested the lease of the top section of the tower as part of the agreement to lease the land. Their antennas would need to be located at 140 feet, which was why the tower was proposed at the 140 foot height.

Mr. Clithero asked if the whips on the outside of the pole were for the Boone County Fire Protection District. Mr. Been replied yes. Mr. Clithero asked if the other antennas would be enclosed. Mr. Been replied no. Mr. Clithero pointed out that was not shown in the diagram. Mr. Been explained they currently only had one tenant, which was the Boone County Fire Protection District. An exhibit provided by Mr. Beckett showed the tower down the street, and that was what this tower would look like, except that it would have a 20 foot omni style antenna at the top.

Chair Townsend understood the letter indicated the applicant was also asking for the landscaping requirement to be waived for security and maintenance reasons. Mr. Been stated that was correct. Chair Townsend asked if that was part of the site plan. Mr. Been replied yes.

There being no further comment, Chair Townsend closed the public hearing.

Mr. MacIntyre commented that staff was recommending approval of the request for a conditional use permit subject to the maximum height of the tower inclusive of the antennas to be 140 feet and to approve of a minor amendment to the existing C-P development plan prior to any building permits being issued for the construction of the tower.

Chair Townsend understood the applicant would need to adhere to the zoning requirements for landscaping, etc. and asked if that was correct. Mr. MacIntyre replied they would respect the decision of the Board since the minor amendment would be an administrative process. Mr. Clithero asked for clarification regarding what that would involve. Mr. MacIntyre explained the Board would not need to take any action in terms of the minor amendment, but the applicant would need to submit a formal request for a minor amendment to the C-P development, which would conform with the approval of the Board, prior to any building permits being issued for construction of the tower. Mr. Clithero asked if that needed to be stated if they approved the conditional use permit request. Mr. MacIntyre replied the Board could choose to include it, and noted the City would require it regardless.

Ms. Wibbenmeyer stated the legal standard was set forth in the Exhibit 2, which was Section 29-21.3 of the Code of Ordinances. She pointed out this case had not been advertised as to a variance to the landscaping and fencing requirements. Chair Townsend understood the Board would not be able to grant that variance. Ms. Wibbenmeyer stated that was correct. Ms. Amin explained her understanding was that issue has been resolved per the person that reviewed the application.

Mr. Beckett commented that if they were limited to 140 feet inclusive of antennas, they would not be able to accommodate the Boone County Fire Protection District antenna. Chair Townsend asked why only 140 feet was requested. Mr. Beckett explained the tower itself was 140 feet. Chair Townsend understood, but if it was extended with an antenna, it would no longer be 140 feet. Mr. Beckett felt antennas were fixtures to the tower. Ms. Wibbenmeyer pointed out the published notice indicated it would be 140 feet. Mr. Clithero stated the tower would still be 140 feet. Mr. Carroz believed everything attached to the tower was considered a part of the tower.

Chair Townsend stated he did not want to get into the habit of approving 140 foot towers with them ending up being 200 feet due to a 60 foot antenna. Mr. Beckett replied the antenna location was reflected in the site plan submitted as part of the application for the conditional use permit. Chair Townsend asked if staff was aware of the fact the height would be more than 140 feet due to the antennas. He asked how the height was calculated. Mr. MacIntyre replied the interpretation of the staff member that had written the report was that the 140 feet should be inclusive of the antennas, however, it was clear from the site plan and elevations submitted that the top of the monopole was 140 feet and the antenna would go to 155 feet. Chair Townsend asked if staff had an issue with it being 155 feet inclusive of antennas. Mr. MacIntyre replied he was not aware of any particular rationale for capping it at 140 feet.

Mr. Flanagan asked if this was being considered a building as far as the Code of Ordinances. Mr. Beckett replied it was not considered a building. Ms. John stated it was considered a structure. Chair Townsend noted he wanted to ensure they were clear for staff.

Mr. Beckett commented that most every tower that had been constructed with the permission of the Board of Adjustment had antennas that extended beyond the cap of the tower. Chair

Townsend pointed out they had approved a lot stealth poles, so that was not necessarily true.

Mr. MacIntyre referred to Section 29-21.3 of the Columbia Code of Ordinances and stated the definition of height in terms of the tower was “the vertical distance measured from the base of the structure at ground level to its highest point and including the main structure and all attachments thereto.” As a result, 155 feet should have been requested by the applicant. Ms. Wibbenmeyer pointed out the application submitted requested a 140 foot monopole style telecommunications facility, and that was the basis of the advertised notice. Mr. Carroz stated that made it clear that the antennas were included as part of the pole in terms of height.

Chair Townsend asked if there was any wiggle room. Ms. Wibbenmeyer replied the problem was that it was not advertised for what they were now requesting. Ms. Amin pointed out they were also asking for something more, and not less.

Mr. Carroz thought they would need to start the process over or table and readvertised this item. Ms. Amin pointed out they would have to resubmit the application for what they really wanted assuming it still met the Code requirements, so it did not matter if it was a brand new application. She also noted the deadline was technically at noon today for a conditional use permit for the December Board of Adjustment meeting, but the Board could make an exception to that deadline for the end of the day tomorrow or some other time that would still allow the advertising deadline to be met.

Mr. Beckett stated they would prefer to have the conditional use permit approved for 140 feet versus tabling the issue for a month or two.

Mr. Clithero suggested the Board approve the request for 140 feet, and if this did not work for the Boone County Fire Protection District in terms of its equipment, they could submit a new application to the Board for the additional height.

Mr. Clithero made a motion to approve the conditional use permit for a 140 foot monopole style telecommunications facility and the associated above ground communications equipment shelter. The motion was seconded by Ms. John.

CASE NO. 1870 VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, TOWNSEND, JOHN, CARROZ, FLANAGAN. VOTING NO: NO ONE. The conditional use permit was approved for a 140 foot monopole style telecommunications facility and the associated above ground communications equipment shelter.

Case Number 1871 was a request by Marjorie Lewis, attorney for GAP Properties, LLC (property owner) and Columbia Hospitality Management, LLC (manager and owner of restaurant business), for variances to sign ordinance by allowing a projecting sign that exceeds the maximum square feet permitted and projects further from the face of the wall than permitted, and by allowing the top of the sign to be further from the ground than permitted on property located at 29 S. Eighth Street.

Chair Townsend opened the public hearing.

Ms. Amin explained correspondence from Skip Walther of 700 Cherry, Inc. and the Columbia Historic Preservation Commission had been received, and that both entities were supportive of granting the variances to allow this sign.

Marjorie Lewis, an attorney with offices at 601 E. Broadway, Suite 203, provided a handout of the exhibits and explained she was present on behalf of GAP Properties, LLC, the owner of the subject property presently zoned C-2 and referred to as 29 S. Eighth Street, and Columbia Hospitality Management, LLC, the manager of the adjacent Tiger Hotel at 23 S. Eighth Street and the soon to be manager of Glen's Café, which would be located on the subject premises. She noted Exhibits 1 and 2, provided as part of the handout, were certified copies of the warranty deeds showing ownership. Exhibits 3 and 4 were the City of Columbia zoning map and assessor's aerial photo. The property was located at the southeast corner of Eighth and Cherry Streets. Mr. Carroz thought it was the northwest corner. Chair Townsend clarified it was the southeast corner of the block and the northwest corner of the street. Ms. Lewis stated Glen's Café had a lengthy history in Columbia, and Columbia Hospitality Management, LLC had obtained the Glen's Café sign to use in the connection with the restaurant. Glen's Café was moving from Booneville, Missouri back to Columbia, Missouri, and the sign had been a part of the restaurant for at least sixty years with it being located in Columbia for almost 50 years. She noted Exhibit 5 was a depiction of the sign as it currently existed, and it was a fair and accurate representation of the sign. The sign was previously affixed as a roof sign when Glen's Café was located at Highway 40 and Sexton Road in Columbia, Missouri, was a wall sign when Glen's Café was at Ninth and Cherry in Columbia, Missouri, and was a projecting sign at the Frederick Hotel in Booneville, Missouri. She noted depictions were shown as Exhibits 6, 7 and 8. She explained the sign was 11 feet 3 inches wide by 5 feet 7 inches tall and they were proposing it be a projecting sign on Eighth Street as indicated on the site plan, which was identified as Exhibit 9. She noted Exhibit 10 had various photographs of the subject building and streetscape as they now existed and Exhibit 11 was a photograph of the site looking north along Eighth Street with the proposed sign superimposed on the photograph in order to know how it might look. The applicant felt the sign was tasteful in appearance, matched the projection of the Tiger Hotel awning, was in keeping with the neighborhood, and was closely associated with Glen's Café and a part of Columbia's history. She pointed out there was also minimal signage on the building currently. She explained the sign had been extensively renovated for its move to the Frederick Hotel at a substantial cost and it could not be modified to meet the current sign ordinances. Due to the types of use in the immediate area, a larger projecting sign was needed to give notice of the location of the restaurant. She referred to Exhibit 12, which was a copy of the letter from Douglas Kenney denying the sign permit application due to the square footage of the sign, and pointed out the proposed sign was a projecting sign so Sections 23-12(b)(5) and 23-12 (c)(2) would likely apply instead and it was not compliant with those provisions either. She noted Exhibit 13 was the application to the Board of Adjustment seeking variances to allow the installation of the sign as indicated on the site plan. The Board would need to increase the allowed square footage of the projecting sign from 8 square feet to 64 square feet, allow the projection to extend to 12 feet and allow the top of the sign to extend to 14 feet above the ground. She stated Exhibit 14 was the listing of parties in interest as submitted as part of the application, and Exhibits 15-19 were certified copies of Sections 23-1, 23-2, 23-12, 23-31 and 29-31 of the Columbia Code of Ordinances. She explained Section 23-31 of the Code of Ordinances provided for appeal to the Board of Adjustment and offered Exhibits 1-19 to be received into evidence. Chair Townsend accepted the exhibits to be received into evidence.

Ms. Lewis stated it was intended for Glen's Café to be located on the street level of the property and the reason the applicant wanted to mount the sign as a projecting sign along Eighth Street was due to the insufficient amount of wall space on the building since it had a lot of windows. She commented that Section 29-12(b)(5) provided for projecting signs to not be more than 8 square feet and not project more than 3 feet from the face of wall, and for the bottom of the sign to be at least 8 feet from the ground and the top of the sign to be no more than 12 feet from the ground. The applicant was requesting variances to three of those specifications as the bottom of the sign would be at least 8 feet from the ground, but the sign would exceed all of the other requirements. She reiterated there was not much signage on the building as it presently existed. She noted Section 23-12(c)(2) provided that a street level business was allowed two signs for a total of 64 square feet, Sections 23-12(c)(1), 23-12 (c)(3) and 23-12 (c)(4) allowed up to 24 square feet of business signs per additional level, and Sections 23-12(c)(5) and 23-12(c)(6) allowed a business that occupied the entire building be allowed one sign per elevation up to the lesser of 64 square feet or 15 percent of the wall space of one elevation, or for a street level tenant in a multi-tenant building with a frontage equal to or greater than 48 feet to install one sign per elevation up to the lesser of 48 square feet or 15 percent of wall space. She explained the subject property had at least 40 feet of frontage on Eighth Street and 100 feet of frontage on Cherry Street, and at this time, the building was well below the allowed total sign square footage, so even if the Board allowed the proposed sign, the signage for the entire building was below what would be allowed if multiple signs were placed on the building. She stated the applicant felt it was important to allow the sign to be erected and reiterated the sign could not be modified. If the Board varied or modified the application of the ordinance as requested, there would substantial compliance with the zoning ordinances, the spirit of zoning ordinances would be observed, public safety and welfare would be secured and substantial justice would be done because the sign was tasteful in appearance, a part of Columbia's history and the history of Glen's Café, and would add to the historic nature of the Tiger Hotel and downtown Columbia. The sign was consistent with the neighborhood and did not detract from the neighborhood. In addition, the keeping of the sign would limit the needed expenditure by the applicant for a conforming sign. She commented that Section 23-2 listed unlawful signs and this sign did not fall into one of those categories. She felt all of the requirements for a variance had been satisfied and requested the Board grant a variance to allow the applicants to install the sign as indicated on the site plan and as shown in Exhibit 11. Ms. John asked for clarification regarding the location of the sign based on Exhibits 9 and 10. Ms. Lewis provided clarification.

Steven Cupp, 505 Amazon Drive, stated he had owned Glen's Café since February of 1985, and that he was now the food and beverage director for the Tiger Hotel. The Glen's Café sign was a porcelain sign and there were not many of those around. He felt it was an iconic sign and noted one of the two questions he was always asked was whether the same sign would be used. He believed it would be a nostalgic addition to the downtown again.

There being no further comment, Chair Townsend closed the public hearing.

Ms. Wibbenmeyer stated Ms. Lewis provided the legal standard the Board needed to consider as part of her presentation.

Ms. John made a motion to approve the variances as requested. The motion was seconded by Mr. Clithero.

CASE NO. 1871 VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, TOWNSEND,

JOHN, CARROZ, FLANAGAN. VOTING NO: NO ONE. The variances were approved as requested.

There being no further business, the meeting adjourned at 7:49 p.m.

Respectfully Submitted,

Sheela Amin
City Clerk